

BEFORE THE IOWA BOARD OF PHARMACY

RE:
Pharmacist License of

MICHAEL BRIXIUS
License No. 21277
Respondent

CASE NO. 2018-148

**COMBINED STATEMENT OF CHARGES,
SETTLEMENT AGREEMENT, AND FINAL
ORDER**

COME NOW the Iowa Board of Pharmacy ("Board") and Michael Brixius ("Respondent"), 519 77th St, West Des Moines IA 50266, and enter into this Combined Statement of Charges, Settlement Agreement, and Final Order ("Order") pursuant to Iowa Code sections 17A.10 and 272C.3(4), and 657 IAC 35.5. The Board has jurisdiction over Respondent and the subject matter of this case pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2018), and 657 IAC chapter 36.

A. STATEMENT OF CHARGES

COUNT I

EMPLOYING A PHARMACY TECHNICIAN WITHOUT CURRENT REGISTRATION

1. Respondent is charged with employing a pharmacy technician without a current registration in violation of 657 IAC 3.3, and may be disciplined pursuant to Iowa Code sections 147.55(9) and 155A.12(1), and 657 IAC 8.3(1) and 36.6(27).

COUNT II

FAILING TO COMPLY WITH CONTROLLED SUBSTANCE INVENTORY RULES

2. Respondent is charged with failing to comply with 657 IAC 10.19 regarding physical count and record of inventory for controlled substances, and may be disciplined pursuant to Iowa Code sections 147.55(9) and 155A.12(5), and 657 IAC 8.3(1) and 36.6(21).

COUNT III

FAILING TO RECONCILE SCHEDULE II PERPETUAL INVENTORY

3. Respondent is charged with failing to reconcile the perpetual inventory record for Schedule II controlled substances as required by 657 IAC 10.18(4), and may be disciplined pursuant to Iowa Code sections 147.55(9), 155A.12(4), and 155A.12(5), and 657 IAC 8.3(1) and 36.6(21).

COUNT IV

FAILING TO PROPERLY MAINTAIN SUPPLIER INVOICES

4. Respondent is charged with failing to maintain supplier invoices in accordance with 657 IAC 8.7(6), and may be disciplined pursuant to Iowa Code sections 147.55(9) and 155A.12(1), and 657 IAC 8.3(1) and 36.6(21).

B. FACTUAL CIRCUMSTANCES

5. Respondent's pharmacist license number 21277 is currently active through June 30, 2020.
6. At all relevant times, Respondent was the pharmacist in charge at Hy-Vee Pharmacy #1064 in Cedar Rapids, Iowa.
7. In January 2018, Respondent knowingly hired a certified technician whose registration with Board was expired.
8. The technician worked at the pharmacy without a certified technician registration issued by the Board until December 2018.
9. Respondent vacated the position of pharmacist in charge effective November 19, 2018.
10. A controlled substances inventory for the change in pharmacist in charge was not done until November 23, 2018, and it was completed by the incoming pharmacist in charge.
11. A subsequent inspection on December 28, 2018, revealed the following deficiencies during Respondent's tenure as pharmacist in charge:
 - a. Respondent did not properly receive or reconcile orders for Schedule II controlled substances.
 - b. Respondent signed and dated all invoices for controlled substances, even when he was not the person who received the order. Respondent did not sign some of the invoices until a few days after the orders had arrived. Respondent was previously educated about this issue during a 2016 inspection.
 - c. Respondent had completed the most recent annual controlled substances inventory on October 21, 2018, which more than 372 days after the date of the previous annual inventory. Respondent did not separate Schedule II controlled substances from the rest of the controlled substances for this inventory.

C. SETTLEMENT AGREEMENT AND FINAL ORDER

12. The Board has jurisdiction over the parties and the subject matter of these proceedings.
13. Respondent acknowledges that the allegations in the Statement of Charges, if proven in a contested case hearing, would constitute grounds for the discipline agreed to in this Order.
14. Execution of this Order constitutes the resolution of a contested case. Respondent has a right to hearing before the Board on the charges, but Respondent waives the right to hearing and all attendant rights, including the right to appeal or seek judicial review of the Board's action, by

freely and voluntarily entering into this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.

15. Respondent acknowledges that he has the right to be represented by counsel on this matter.

16. Respondent agrees that the State's counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.

17. This Order is subject to approval by a majority of the full Board. If the Board does not approve this Order, it shall be of no force or effect to either party, and shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Order, it shall be the full and final resolution of this matter.

18. This Order shall be part of Respondent's permanent record and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

19. Respondent understands the Board is required by federal law to report any adverse action to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank.

20. This Order, when fully executed, is a public record and is available for inspection and copying in accordance with the requirements of Iowa Code chapters 22 and 272C.

21. The Board's approval of this Order shall constitute a **FINAL ORDER** of the Board.

IT IS THEREFORE ORDERED:

22. Respondent is hereby **CITED** for employing a pharmacy technician without current registration, failing to comply with controlled substance inventory rules, failing to reconcile the Schedule II perpetual inventory, and for failing to properly maintain supplier invoices and **WARNED** that future violations of the laws and rules governing pharmacists can result in further disciplinary action.

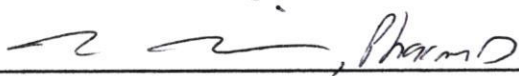
23. Respondent shall pay a **CIVIL PENALTY** in the amount of one thousand dollars (\$1,000) within thirty (30) days of Board approval of this Order. The check shall be made payable to the "Treasurer of Iowa" and shall be deposited in the general fund. The civil penalty should be mailed to the Iowa Board of Pharmacy, Attn: Amanda Woltz, 400 SW 8th St, Ste E, Des Moines IA 50309.

24. Respondent shall submit a two thousand five hundred (2,500) word essay about pharmacist in charge responsibilities in Iowa within thirty (30) days of Board approval of this Order. In the essay, Respondent shall specifically address the violations noted in the statement of charges, include personal reflections on what has been learned through this process and subsequent research, and provide an opinion regarding the role of pharmacist in charge in corporate pharmacy practice. The essay should be emailed to Amanda.Woltz@iowa.gov.

25. Respondent shall notify all current and future employers of this Order.

26. Should Respondent violate the terms of this Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 147, 155A, and 272C and 657 IAC chapter 36.

8-21-19
Date


MICHAEL BRIXIUS
Respondent

This Combined Statement of Charges, Settlement Agreement, and Final Order is approved by the Iowa Board of Pharmacy on the 10th day of September, 2019.


Chairperson
Iowa Board of Pharmacy